



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes
Julie Edmonds-Mares

SUBJECT: SEE BELOW

DATE: December 2, 2014

Approved

Date

12/4/14

**SUBJECT: ACTIONS RELATED TO THE 6405-COLEMAN SOCCER FIELDS
DESIGN-BUILD REBID PROJECT**

RECOMMENDATION

- (a) Approve the termination of the construction contract with Interstate Grading and Paving, Inc. for the 6405-Coleman Soccer Fields Design-Build Rebid Project for convenience.
- (b) Adopt a resolution authorizing the Director of Public Works to:
 - (1) Re-bid the Project;
 - (2) Negotiate and execute an agreement with Bellinger Foster Steinmetz Landscape Architecture not to exceed \$300,000 to make any necessary revisions to the final plans for re-bid.

OUTCOME

Approval of the termination of the construction contract with Interstate Grading and Paving, Inc. (IGP) will allow staff to re-bid the 6405-Coleman Soccer Fields Design-Build Project (Project) in light of changed regulatory and site conditions and a fully-developed scope of work for the Project.

EXECUTIVE SUMMARY

Staff recommends terminating for convenience the construction contract with IGP due to changed regulatory and site conditions and a fully-developed scope for the project, coupled with concerns regarding the cost effectiveness of continuing with the Project within the constraints of the original contract.

Following the award of the design-build contract to Interstate Grading and Paving, Inc. (IGP) for this Project, three particular changes emerged during the design phase that resulted in significant alteration to the scope of construction work: stormwater permit regulatory change, functional

design change to the concession building, and the discovery of asbestos in the existing pavement and base rock on the site. Staff worked through the stormwater permit and concession building changes, and contract allowances and the project contingency may have been able to absorb the associated increased costs. However, the discovery of asbestos and its related costs and issues caused staff to re-evaluate proceeding with the Project under the current contract. After considering the effects of the cumulative changes, staff has concluded that it would likely be more cost-effective to terminate the existing design-build contract with IGP and re-bid the Project with the fully-developed scope.

The recommended actions will enable staff to prepare a construction package in order for the modified project to be re-bid. This in turn will allow competitive market-driven pricing to deliver the most cost-effective construction.

If the recommended actions are approved, staff intends to re-bid the Project in March 2015, award in May 2015, and complete construction approximately one year later.

BACKGROUND

Bids were opened February 9, 2012, and on June 19, 2012, Council approved the award of the construction contract for the Project to IGP for the base bid and Add Alternate No. 1 in the amount of \$11,873,000 and of a contingency in the amount of \$1,187,300. The award of this Project was delayed because the details of the City's acquisition of the land for development of the soccer fields, as well as the operations and maintenance agreement with the Earthquakes, required Council approval prior to the approval of this Project's construction contract as they affected the location, and the funding of the operations and maintenance, of the facility. Those separate memoranda were approved at the June 19, 2012, City Council meeting (Items 5.2, 5.3 and 5.4).

Following the award of the design-build contract for this Project, significant changes occurred which altered the scope of construction. The changes generally fall into three categories which are discussed below.

Stormwater Permit Conditions

Per the City's Municipal Regional Stormwater NPDES Permit issued in October 2009, public projects had until December 1, 2012, to start construction under the previous permit requirements. Any project starting construction after that date had to comply with the new regulations.

The Project Design Manual in the bid documents was based on the previous permit conditions and on the premise that the Project would meet the deadline. Due to the delay in the contract award, it wasn't possible to meet the December 1, 2012, deadline and the new stormwater compliance regulations became effective. The new stormwater post-construction treatment

design for the Project represented a significant departure from cost information developed prior to bidding the Project.

Moreover, the new requirements for stormwater post-construction treatment and the State Department of Toxic Substances Control (DTSC) requirements for the capping of the soil underneath the soccer field section were in direct conflict with each other. From December 2012 to August 2013, staff and IGP reviewed several options for achieving compliance, none of which worked to resolve both issues. In August 2013, a new stormwater post-construction treatment option became available which met both requirements, and design work for the stormwater treatment, grading and storm drainage resumed.

IGP has completed - and the City has paid for - the design work related to the new stormwater compliance regulations. IGP's proposed change order total for the additional cost of constructing the stormwater treatment caused by the change in regulations was \$1,249,000. This number would have likely increased from the time it was proposed as it does not reflect the stormwater treatment for the parking lot nor any revisions made to the plans from the 50-95% submittal. Staff believes this increase could be as much as \$50,000 resulting in an overall estimated \$1,299,000 change order and is shown in Table 1 below.

Design of the Concession Building

After award of the design-build contract to IGP, the City made the decision to modify the Project to include a full kitchen in the concession building. This change resulted from the City's agreement with the Earthquakes for the operation and maintenance of this facility and in consideration of the positive economic impact of having a full kitchen versus the originally planned heat and serve kitchen. IGP had to completely redesign the kitchen to meet the new requirements.

IGP has completed – and the City has paid for – the design work related to having a full kitchen in the concession building. IGP's proposed change order total for constructing the changes resulting from the concession building having a full kitchen was \$387,000. This number would have likely increased from the time it was proposed because it does not include the revisions made to the plans from the 50-95% plan submittal. Staff believes this increase could be approximately \$25,000 resulting in an overall estimated \$412,000 change order and is shown in Table 1 below.

It is important to note that the design-build contract allowances and the project contingency may have been able to absorb the increased costs of the stormwater and concession building changes if the contract with IGP were to continue. However, the unanticipated discovery of asbestos on the site, as discussed below, created costs and other issues that significantly compromised the project budget.

Asbestos

The Coleman Soccer Complex is located at the Airport West site on Coleman Avenue (see attached map) on a former manufacturing property (FMC) that stored and used a variety of hazardous materials. As a result, the property has undergone extensive investigations, remediation and health risk assessments under the regulatory oversight of the DTSC beginning in the early-1990s. The production operations on the site ended in 1997. Due to the complexity of the environmental investigations and cleanup, closure of the site involved dividing the site into areas:

- The Central Plant Area (where the Earthquakes' Stadium project is located); and
- The Test Track Area (where the Coleman Soccer Fields project and the Coleman Highline project are located)

Corrective Measures Study Reports were completed by FMC and approved by the DTSC for the Test Track Area in 2001 and Central Plant Area in 2005. Groundwater is impacted with organic contaminants and continues to be pumped and treated by FMC with oversight from DTSC and the Regional Water Quality Control Board (RWQCB). There are land use restrictions for both areas and each had to develop a Soil Management Plan (SMP) prior to redevelopment.

SMP for the Central Plant Area (Earthquakes' Stadium site)

FMC prepared the SMP for the Central Plant Area, and it was approved by DTSC in 2007. Because the SMP for the Earthquakes' Stadium site was prepared by FMC and accepted by DTSC in 2007, they have lesser monitoring standards and requirements to adhere to than the Coleman Soccer Field and Coleman Highline projects where the SMP was completed later when certain regulatory standards had become more stringent.

SMP for the Test Track Area (Coleman Soccer Field and Coleman Highline sites)

The City completed the SMP in April 2011 to address future site development including the soccer field complex. The risk-based target levels for lead had significantly decreased since FMC did their remediation. Although it was not required by the SMP, out of an abundance of caution the City proactively performed an investigation that included drilling 52 borings of the soil only on the Coleman Soccer Site and had them tested for lead to determine if the site soil was below the new target level. Additionally, because staff noticed a white chalky substance during the boring process, 10 of the samples were also tested for asbestos. The high levels of asbestos detected in the soil triggered the requirement for an asbestos handling plan (soil only) for the Project, and this was included in the bid documents. It is not an industry standard to test for asbestos in concrete, asphalt or base rock unless there is reason to suspect that it might have been used.

The SMP, which was approved by the DTSC, includes oversight during construction and mitigation measures such as capping the soccer fields with hardscape or clean soil. The Coleman

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Highline site is under the same SMP as the Coleman Soccer Fields and should be adhering to the same conditions and requirements. At the time of the writing of this memorandum, the demolition and stockpiling permit has been issued and work has begun. Although the Coleman Highline site appears to have the same surface pavement and base rock conditions as the soccer field site, the SMP does not require testing of the Highline site. Thus far, no signs of soil contaminants have been noticed by the contractor or the environmental consultant nor has asbestos been discovered; therefore, the Highline site is not considered an asbestos site and no special measures are required other than standard dust mitigation and other best management practices required for the stormwater permit. Staff is working with the developer to ensure the SMP provisions are followed.

Coleman Soccer Fields Site

By mid-March 2014, the Project construction plans were completed to the point that site demolition, including the concrete and asphalt pavement crushing, could commence. This site, unlike the Coleman Highline project, has an air monitoring requirement for asbestos because asbestos was discovered in the soil during the testing done prior to the implementation of the SMP. Within the first three days of demolition and stockpiling of the asphalt, on site air monitoring registered unacceptable levels of asbestos. Between April and June 2014, the City's consultant took 63 samples of the existing concrete, asphalt and base rock from the site and had them analyzed. The asphalt, concrete and the base rock all tested positive for asbestos. The levels of asbestos found necessitated that the contractor performing the work possess an ASB-asbestos certification and CalOSHA registration. IGP does not have either one.

The plans and permits with DTSC, RWQCB and Bay Area Air Quality Management District (BAAQMD) were all affected by the high levels of asbestos in the existing base rock, concrete and asphalt. Staff started negotiations with these regulatory agencies in July to revise the plans and permits so that work could continue. IGP's proposed plan was to crush the asbestos-containing pavement and bury it on-site underneath the soccer fields along with the asbestos-containing baserock. The DTSC was contacted about this plan and provided approval via email. The DTSC SMP will require revision to document the burial of the asphalt, concrete and base rock. In order to crush and bury the asbestos containing concrete and asphalt on site instead of taking it to a landfill, the BAAQMD permit revision requires the City to perform a site specific risk assessment and submit that along with the contractor's crusher permit in order to obtain a site specific exemption. Once they receive this information, BAAQMD's processing time is a minimum of four (4) months.

Because IGP does not possess the required certification or registration, they would need to have a subcontractor with the required qualifications perform the asbestos-related work. It took IGP three (3) months to obtain a proposed cost from a subcontractor with the required qualifications to handle the asbestos containing material, and their proposed change order for this work was \$689,000. This was a preliminary estimate based on the testing that was done on site. There were many caveats to this estimate including that access to the adjacent Coleman Highline site, encumbered with a tightly-timed parking agreement with the Earthquakes, would be available in

order to move, stockpile and perform crushing operations for the asphalt and concrete. Also, it did not include any off-haul of excess material. Since the Coleman Highline site is no longer available due to the timing-driven need to prepare the area for Earthquakes' stadium parking, the preliminary estimate is no longer valid, and staff believes the cost will escalate a minimum of \$200,000 to include the fact that all material has to be stored and handled on site. Moreover, there would likely be additional costs to off-haul excess material that cannot be used on-site. Using the preliminary information from IGP and anticipating the cost increases discussed, staff estimates a rough change order value of \$1,000,000 as shown in Table 1 below.

The discovery of the asbestos in the asphalt and concrete pavement, and in the baserock, was not anticipated. The City has asserted via a letter to FMC that it did not disclose the presence of asbestos in the existing asphalt and concrete pavement and/or base rock in the test track area. In accordance with the right of entry and easement agreement between the City and FMC, the letter has also requested that FMC dispose of or cap the asbestos material so that the City can reuse the property. FMC has acknowledged receipt of the letter and has indicated that it is reviewing the matter.

Additional Project Delivery Costs

Project delivery costs, which include staff time, consultant fees, and utility connections, have increased due to the fully-developed scope of work, unanticipated site conditions, and extended schedule. To date, an estimated \$1,600,000 has been spent for project delivery which includes the preparation of the original bid package, initial geotechnical report, staff project management, consultant fees (including preparation of the mitigated negative declaration), coordination with DTSC, and Partnering and Dispute Resolution Board. To proceed with the Project due to the complexity of dealing with the asbestos, new stormwater regulations, and fully-developed concession building scope, there are additional staff costs (\$1,275,000) as well as additional consultant fees (\$300,000 for URS Corporation) that are required and shown in Table 1 below. Additionally, the water and PG&E service connections for the original Project scope are no longer viable or sufficient, and staff has included an estimated \$315,000 cost for the required utility contracts in Table 1 below.

Monitoring Wells

Another item of concern is the re-location of the monitoring wells which are owned and maintained by FMC on the site. Due to the Project footprint, the City is funding \$135,000 (as shown in Table 1 below) in order to have FMC abandon 13 monitoring wells and relocate nine (9) wells. It took longer than anticipated to work through an agreement with FMC for this work, and these wells are now on the critical path of work as they have not yet been moved. It is anticipated that this work will now be complete in March 2015.

Developer Offers

The City has been approached by the developers of the adjacent sites - the Earthquakes' Stadium and the Coleman Highline Development - with offers to perform the work at the Coleman Soccer Fields at the City's expense. In order to do this, the developer would need to meet several conditions including the payment of prevailing wages and possibly comply with the City's competitive bidding requirements. An offer with the exact price has not been submitted and, therefore, due to the combination of concerns as to whether it would be substantially less and the timing of developing an agreement, these offers are considered impractical. However, the developers can participate in the rebidding of the Project if they choose.

Termination Process

On September 24, 2014, the City notified IGP of the Department's intent to pursue the termination "for convenience" of the construction contract pursuant to Section 8-1.11 of the City Standard Specifications, entitled "Termination of Contract." Staff is currently negotiating with IGP regarding the final compensation due in the event of termination. If agreement is reached prior to this memorandum going to Council, a supplemental memo with the proposed agreement information will be submitted to Council. As shown in Table 1 below, an Estimated Tentative Settlement Cost of \$120,000 is currently being finalized with IGP.

Contract with Bellinger Foster Steinmetz Landscape Architecture (BFS)

If the action to terminate the contract with IGP is approved, the City should hire Bellinger Foster Steinmetz Landscape Architecture (BFS) to coordinate all the sub-consultants (civil engineers and site utilities, architectural, building mechanical, building electrical, building plumbing, site electrical and structural engineers) to make minor changes to the plans and specifications they prepared under contract to IGP and to provide construction assistance during the course of the project. BFS was the primary designer on the design-build team under the IGP contract, and due to their familiarity with the Project design, provide continuity of the design effort already completed.

Because the original bid was a design-build Project, the plans and specifications prepared for IGP for submittal and approval by the City were "buildable" but not "biddable." The plans and specifications will need some minor modifications so that they can be put out for re-bid. BFS will hire all the sub-consultants previously used on the project to make these changes and will provide construction assistance during the construction of the Project. It is anticipated that this contract will be less than \$300,000. This cost is reflected in Table 1 below.

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ANALYSIS

Table 1 below outlines the original Project budget, the estimated Project cost under the current IGP contract with the proposed change orders, increased Project delivery costs, and the estimated Project costs under the Terminate and Rebid option.

TABLE 1

	Original Budget	PROJECT OPTIONS	
		Current IGP Contract	Terminate and Rebid
Costs to Date			
Construction	\$11,273,000	\$278,932	\$278,932
Design	\$600,000	\$739,345	\$739,345
Project Delivery/Staff Costs	\$1,653,650	\$1,600,000	\$1,600,000
Contingency	\$1,187,300	\$27,449	\$27,449
Project Delivery/Consultant Costs	\$228,000		
Estimated Settlement Cost			\$120,000
Monitoring Well Relocation	\$135,000		
TOTAL PROJECT BUDGET	\$15,076,950		
TOTAL COMMITTED TO DATE		\$2,645,726	\$2,765,726
Estimated Remaining Costs to Proceed		IGP Contract	Rebid
Construction		\$10,994,068	\$12,200,000
Changed Project Conditions (proposed change orders)			
Stormwater		\$1,299,000	
Concession Building		\$412,000	
Asbestos Material Handling/Burial		\$1,000,000	
Contingency		\$1,159,851	\$1,159,851
Project Delivery			
New Estimated Consultant Fees - URS		\$300,000	\$300,000
New Estimated Consultant Fees - BFS			\$300,000
New Project Delivery/Staff		\$1,275,000	\$1,275,000
Monitoring Wells Relocation		\$135,000	\$135,000
New Estimated Utility Connections (water/PG&E)		\$315,000	\$315,000
TOTAL REMAINING COSTS		\$16,889,919	\$15,684,851
TOTAL PROJECT COSTS		\$19,535,645	\$18,450,577

The original contract of \$11,873,000 included \$600,000 for design and \$11,273,000 for construction. The total cost of IGP's proposed change orders for the additional construction work resulting from the changes to the stormwater permit requirements, concession building kitchen, and the discovery of asbestos is approximately \$2,700,000, or a 24% increase in the cost

of construction. Although the IGP contract allowances and project contingency may have been able to absorb the increased costs of the stormwater and concession building changes, there would be no contingency left to handle any subsequent costs during construction and, more importantly, the costs of asbestos handling and burial will increase costs significantly beyond the project budget.

Under the IGP contract, the pricing for the proposed change orders is not subject to competitive bidding, and the work is exposed to both subcontractor and contractor markups. Re-bidding the project with the fully-developed work scope will allow for market-driven pricing on all construction elements. It will also address the certification issue by the contractor performing the asbestos work. Based on pricing from similar work on current projects, staff has developed a new construction estimate of \$12,200,000 under the Terminate and Rebid option as shown in Table 1 above. This new estimate includes the fully-developed scope of construction work and presumes that a responsive bid will be received that is proximate to this amount. As can be seen from the differences in both the total remaining and overall project costs, the Terminate and Rebid option will likely result in more than \$1 million in reduced costs to the City. Should the City receive below market-rate bids as has happened on many past CIP projects, especially during the winter off-peak timeframe, the costs may be further reduced.

In the project re-bid, staff also intends to incorporate an add-alternate item for off-haul of the asbestos-containing pavement and baserock. Depending on market pricing, it may result in a higher cost project option. However, the advantages to completely off-hauling the asbestos material are that (1) the Project schedule becomes more certain because the approximate 4-month process to obtain a site specific exemption for the BAAQMD permit would no longer be required, and (2) the risk of exceeding the required air quality monitoring threshold for asbestos during the crushing process is eliminated. In addition, after the off haul, the site would be "clean" of asbestos, with the exception of naturally occurring asbestos (NOA) in underlying soil. Depending on the outcome of the bidding for the add-alternate item, staff will make a recommendation on whether this alternative should be incorporated at the time of the award of the re-bid.

In summary, staff recommends the termination for convenience of the construction contract with IGP and rebidding the project due to the cumulative changes, fully-developed scope of work and associated required contractor certifications, and to allow for competitive market-based pricing on the modified pricing which should ultimately result in reduced overall costs to the City.

EVALUATION AND FOLLOW-UP

Staff will return to Council for award of the project following the March 2015 re-bid, and pursue any necessary budget actions at that time.

PUBLIC OUTREACH

To solicit contractors, this project was listed in an online bid solicitation website *BidSync* and in the *San Jose Post Record*.

This memorandum will be posted on the City's website for the December 16, 2014 Council agenda.

COORDINATION

This project and memorandum have been coordinated with the Departments of Environmental Services, Planning, Building and Code Enforcement, the City Attorney's Office, the Office of Economic Development, and the City Manager's Budget Office. Other entities which have required coordination include the Bay Area Air Quality Management District, Regional Water Quality Control Board, the State Department of Toxic Substances Control, and FMC.

COST SUMMARY/IMPLICATIONS

As detailed in Table 1, terminating the construction contract and re-bidding the project with the fully-developed scope will likely reduce the overall cost of the project by approximately \$1.1 million versus continuing within the IGP contract constraints. However, it is anticipated that the revised estimated overall project cost will exceed the current budget by approximately \$3.4 million. To bridge this shortfall, Parks Recreation and Neighborhood Services staff is currently working to identify potential funding sources such as the Parks and Recreation Bond Projects Contingency Reserve, grants, and other dedicated park funding. If necessary, this could be used to offset the additional costs. Once the construction bids are received, a funding plan to address the gap will be identified and included in the construction contract award memorandum that will be submitted to the City Council following the anticipated March 2015 re-bid.

CEQA

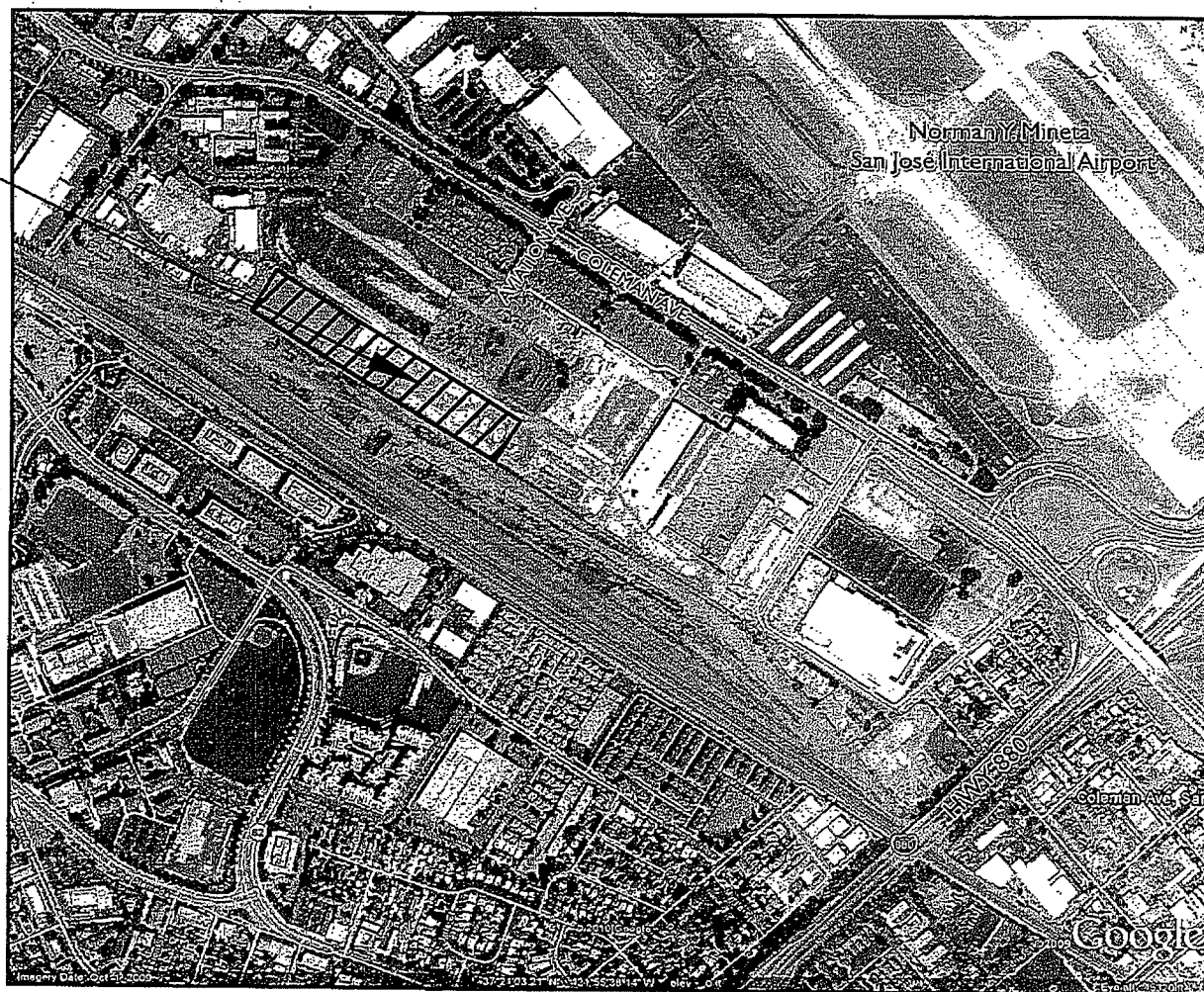
Mitigated Negative Declaration, File No. PP10-155, May 10, 2011.

/s/
DAVID SYKES
Director of Public Works

/s/
JULIE EDMONDS-MARES
Director of Parks, Recreation and
Neighborhood Services

For questions please contact Barry Ng, Assistant Director, Public Works, at (408) 535-8300.

PROJECT SITE
COLEMAN AVE. &
AVIATION AVE.



COLEMAN SOCCER FIELDS

LOCATION MAP - NTS